

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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NHAT KIM TRIEU,  
*Petitioner Employee,*

*v.*

THE INDUSTRIAL COMMISSION OF ARIZONA,  
*Respondent,*

SOLAR INDUSTRIES,  
*Respondent Employer,*

AMERISURE INSURANCE COMPANY,  
*Respondent Insurer.*

No. 2 CA-IC 2013-0020  
Filed April 21, 2014

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THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

*See Ariz. R. Sup. Ct. 111(c); Ariz. R. Civ. App. P. 28(c).*

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Special Action – Industrial Commission  
ICA Claim No. 20113550556  
Insurer No. 1254522  
Gary M. Israel, Administrative Law Judge

**AWARD AFFIRMED**

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COUNSEL

Nhat Kim Trieu, Tucson  
*In Propria Persona*

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The Industrial Commission of Arizona, Phoenix  
By Andrew F. Wade  
*Counsel for Respondent*

Klein, Doherty, Lundmark, Barberich & LaMont, P.C., Tucson  
By Eric W. Slavin  
*Counsel for Respondents Employer and Insurer*

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**MEMORANDUM DECISION**

Presiding Judge Vásquez authored the decision of the Court, in which Chief Judge Howard and Judge Miller concurred.

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V Á S Q U E Z, Presiding Judge:

¶1 In this statutory special action, Nhat Trieu challenges the administrative law judge's (ALJ) award, finding that his industrial injury is medically stable with no permanent disability. For the reasons that follow, we affirm.

**Factual and Procedural Background**

¶2 "On review, we consider the evidence in the light most favorable to upholding the award, and we deferentially review all factual findings made by the ALJ." *Hackworth v. Indus. Comm'n*, 229 Ariz. 339, ¶ 2, 275 P.3d 638, 640 (App. 2012) (internal citation omitted). In December 2011, while working as an assembler for Solar Industries, Inc., Trieu hurt his right hand as he "lift[ed] a glass picture window" and "hit the top of [his] hand." A week later, Trieu visited Dr. Thomas Futch and reported he could not make a fist and was experiencing severe pain, as well as "tingling" and "decreased touch" in his third, fourth, and fifth fingers. Futch diagnosed Trieu with "[r]ight wrist tendinitis" and "[r]ight hand pain." Trieu filed a claim for workers' compensation benefits, but Solar Industries' insurer, Amerisure Insurance Company, denied benefits in a notice of claim status.

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¶3 In May 2012, Trieu filed a pro se request for a hearing.<sup>1</sup> Dr. John Hayden, an orthopedic surgeon “with an upper extremity focus,” testified he had conducted an independent medical evaluation (IME), had determined that Trieu had not sustained an industrial injury in December 2011, and had recommended no treatment. Although he conducted “X-rays, EMG<sup>2</sup> testing, . . . MRI<sup>3</sup> scans, and bone scans,” he could “find nothing on physical examination to explain all [of Trieu’s] complaints.” Dr. Peter Campbell, a board-certified orthopedic specialist with a subspecialty in hand surgery, conducted a second IME in November 2012 and reached similar conclusions. Campbell reviewed Futch’s initial reports and suggested there may have been a compensable injury sustained in December 2011. But Campbell stated that the symptoms “had resolved by the time [he] had the opportunity to evaluate [Trieu].” Campbell suggested that Trieu’s current symptoms might be related to other, nonindustrial ailments instead:

[T]here are numerous causes for numbness in the extremities. . . . That can be just a laundry list of possibilities: metabolic disorders, thoracic outlet syndrome, a cervical disc problem, something in the brain that’s causing pressure on a specific part of the brain that leads to the nerves

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<sup>1</sup>The ALJ consolidated this request with two other claims for left-wrist injuries Trieu had sustained in 2008 and 2012. On appeal, Trieu refers to these and other physical ailments he has experienced over the years. However, his appeal is taken from a separate award, which did not address these other injuries, issued several months after the consolidated proceedings had ended. Therefore, our review is limited to the claim for the December 2011 right-wrist injury. See *Norsworthy v. Indus. Comm’n*, 24 Ariz. App. 73, 74, 535 P.2d 1304, 1305 (1975) (scope of review limited to issues presented to ALJ).

<sup>2</sup>Electromyography.

<sup>3</sup>Magnetic resonance imaging.

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that exit the cervical spine, demyelinating conditions, such as multiple sclerosis. I'm sure I'm leaving out hundreds of more potential causes.

He added that many of these conditions “could also cause the symptoms that . . . Trieu complained of with regards to right wrist pain and swelling.” He concluded “the reported symptoms of swelling in both hands and wrists [after physical] activity, with the report of paresthesias [were] becoming more concerning,” but that those symptoms were nevertheless unrelated to the industrial injury.

¶4 In February 2013, the ALJ issued a decision upon hearing and award for compensable claim. The ALJ found that Hayden and Campbell’s opinions did not conflict substantially, but to the extent they did, resolved them by adopting Campbell’s testimony, opinions, and reports. The ALJ concluded that a compensable injury had occurred in December 2011, and awarded Trieu “[t]emporary total and/or temporary partial disability compensation” and “[m]edical, surgical and/or hospital benefits . . . until his right upper extremity condition related to this accident is medically stationary.”

¶5 Less than two months later, Amerisure issued a notice of claim status closing Trieu’s claim, effective March 5, 2013, with no permanent impairment, because he was medically stationary when Campbell conducted his IME in November 2012. Trieu filed a request for hearing, arguing he was still “totally disabled and in need of active medical treatment related to the date of injury.” Campbell testified at this hearing as well, essentially restating his earlier opinions. Trieu presented contradictory testimony from Dr. Scott Forrer, a board-certified neurologist, but the ALJ again adopted Campbell’s opinion. The ALJ then issued a decision upon hearing awarding Trieu temporary compensation and active care from the date of injury “through March 5, 2013.”

¶6 Trieu filed a request for review, but the ALJ affirmed the award. This petition for review followed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(2), 23-951(A), and Rule 10, Ariz. R. P. Spec. Actions.

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**Sufficiency of the Evidence**

¶7 Trieu's argument on appeal, as we understand it, challenges the ALJ's finding that his right-wrist injury was medically stationary as of March 2013.<sup>4</sup> We will sustain an Industrial Commission award if reasonably supported by the evidence, *Lawson v. Indus. Comm'n*, 12 Ariz. App. 546, 547, 473 P.2d 471, 472 (1970), and will not disturb an award based on conflicting medical evidence unless the ALJ's resolution of the conflict is "'wholly unreasonable,'" *Rosarita Mexican Foods v. Indus. Comm'n*, 199 Ariz. 532, ¶ 10, 19 P.3d 1248, 1251 (App. 2001), quoting *Stainless Specialty Mfg. Co. v. Indus. Comm'n*, 144 Ariz. 12, 19, 695 P.2d 261, 268 (1985).

¶8 Pursuant to A.R.S. § 23-1062(A), a claimant who suffers an industrial injury is entitled to "medical, surgical and hospital benefits or other treatment . . . reasonably required" during the period of his disability. See also *Carbajal v. Indus. Comm'n*, 223 Ariz. 1, ¶ 8, 219 P.3d 211, 213 (2009). Such benefits are not payable if the claimant's condition is medically stationary, that is, "when the physical condition of the employee resulting from the industrial injury has reached a relatively stable status so that nothing further in the way of medical treatment is indicated to improve that condition." *Aragon v. Indus. Comm'n*, 14 Ariz. App. 175, 176, 481

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<sup>4</sup>Trieu's opening brief fails to identify any legal grounds for setting aside the ALJ's decision, and the brief contains no legal authority or citations to the record. His failure to comply with the Rules of Civil Appellate Procedure could be deemed an abandonment and waiver of his claim. See Ariz. R. Civ. App. P. 13(a)(6) (appellant's brief must contain "citations to the authorities, statutes and parts of the record relied on"); *Polanco v. Indus. Comm'n*, 214 Ariz. 489, n.2, 154 P.3d 391, 393 n.2 (App. 2007) (failure to develop argument according to procedural rules results in waiver). Exercising our discretion, however, we address the issue raised on its merits. See *Adams v. Valley Nat'l Bank of Ariz.*, 139 Ariz. 340, 342, 678 P.2d 525, 527 (App. 1984) ("[C]ourts prefer to decide each case upon its merits rather than to dismiss summarily on procedural grounds.").

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P.2d 545, 546 (1971); see also *Johnson-Manley Lumber v. Indus. Comm'n*, 159 Ariz. 10, 13, 764 P.2d 745, 748 (App. 1988) (need for active medical treatment aimed at improving employee's condition means condition not medically stationary). But "[w]hen the result of an accident is one not clearly apparent to a lay person, the physical condition of the injured employee and the causal relationship of the accident to that condition must be determined by expert medical testimony." *Johnson-Manley Lumber*, 159 Ariz. at 12, 764 P.2d at 747.

¶9 Here, the ALJ's conclusion that Trieu's industrial injury was medically stationary is reasonably supported by expert testimony in the record. Trieu's medical expert, Forrer, diagnosed Trieu's symptoms as "repetitive motion syndrome and chronic tenosynovitis." He stated the ailments were "related to the industrial injury in question" and recommended continued medication, a surgical opinion, injection treatment, and therapy. In contrast, Campbell agreed that Trieu needed further care but concluded that the symptoms he now experienced were unrelated to the industrial injury. Campbell initially considered the possibility that Trieu's complaints of numbness, pain, and swelling were caused by "nerve compression and tendinitis." But, "[n]erve studies were performed which . . . proved negative," and so he "rule[d] out a compressive neuropathy." And, he stated, although a repetitive overuse abnormality like tendinitis could cause pain and swelling, it would not have had "acute onset of symptoms on the 2011 date of injury." Campbell concluded that Trieu's initial injury, "at most, . . . was a contusion to the finger" and that his current symptoms were likely caused by other disorders unrelated to the industrial accident.

¶10 Although the parties presented conflicting evidence, it was the ALJ's responsibility to "resolve all conflicts in the evidence, especially [because] the conflicts involve expert medical testimony." *Post v. Indus. Comm'n*, 160 Ariz. 4, 8, 770 P.2d 308, 312 (1989). In its decision upon hearing, the ALJ resolved these conflicts "by adopting the testimony, opinions, and reports of . . . Campbell as being most probably correct and well-founded." In turn, the ALJ found that Trieu's numbness was not related to the injury because "compressive neuropathy ha[d] been ruled out." And although the ALJ acknowledged that Forrer had "diagnosed repetitive use

syndrome,” which would explain the symptoms of swelling and pain, “the finding for [a] compensable claim [in February 2013,] was not for a repetitive use syndrome or injury.”

¶11 The ALJ’s award was reasonably supported by the evidence, *see Lawson*, 12 Ariz. App. at 547, 473 P.2d at 472, and we cannot say that adopting Campbell’s testimony and reports was wholly unreasonable, *see Rosarita Mexican Foods*, 199 Ariz. 532, ¶ 10, 19 P.3d at 1251.

### **Disposition**

¶12 We affirm the ALJ’s award.